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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 300

ROBERT H. REDDICK, M.D.,
Petitioner,

vs.

STATE OF MARYLAND, EX REL. C. FERDINAND SYBERT, ATTORNEY GENERAL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

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The Daily Record Co., Baltimore 3, Md.

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OPINION BELOW

The Opinion of the Court of Appeals of Maryland appears in full on pages 27-37 of the Appendix to the Petition for Certiorari, and appears in 213 Md. 18, 130 A. 2d 762.

JURISDICTION

The jurisdictional statement contained in the Petition is accepted by the Respondent.

QUESTIONS PRESENTED

It is believed by the Respondent that the following questions clarify the vague questions presented by the Petitioner:

1. Was the decision below, finding that the Petitioner and others were acting illegally, clearly correct?

2. Did the activities of the Attorney General of Maryland in attempting to uphold the law of his State constitute an unlawful interference with the rights of its sister States?

3. Did the activities of the Attorney General of Maryland as approved by the Court of Appeals "generate a condition which borders upon a monopoly in violation of the Sherman Anti-Trust Laws"?

4. Was the State of Maryland, upon the relation of the Attorney General, a proper party?

STATUTES INVOLVED

Statutes are set forth in the Petition for Writ of Certiorari.

STATEMENT

The practice of medicine in Maryland was regulated, so far as licensing was concerned, by two separate Boards of Medical Examiners. One of the Boards represented the Medical and Chirurgical Faculty of the State of Maryland and the other represented the Homeopathic Medical Society of the State of Maryland. However, effective June 1, 1957, the Board representing the Homeopathic Medical Society was abolished and there now is only one Board which licenses both allopathic and homeopathic physicians.

Chapter 29, Acts of 1957 of the General Assembly of the State of Maryland.

Since we are here interested in the defunct Homeopathic Board, references herein to the "Board" will be to the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society, and references to the "Society" will be to the Maryland State Homeopathic Medical Society. The Board consisted of eight members who were selected by the Society, and each member was to serve for four years or until his successor was appointed and qualified. Throughout the years, minute books of the Society and of the Board indicate that very many homeopathic physicians were examined and licensed. Dr. John Evans of Baltimore, a well-known homeopathic physician, was for many years prior to 1950 Secretary of the Society. Upon his death in 1951, the Homeopathic Society fell into a state of disuse. There is no record of any meeting after the one held on May 10, 1950, until May 23, 1954, when the Society met for its 79th Annual Meeting (R. 221-222). The Petitioner Reddick appears to have been one of the prime movers behind the calling of this meeting, and in the course of it was elected as the Secretary of the Society and as a member of the Board of Medical Examiners. According to the formal minutes of the meeting prepared by Reddick, Doctors Croissant, Follweiler, Harrison, Simon, Swartwout, Watson and Chepko were also elected to the Board for terms ranging from two years to five years, although the law directed that the Board members be elected for terms of four years (R. 214).

The Board scheduled examinations for *"qualified"* applicants for licensure from December 12th through the 14th of 1955. In the meantime, Reddick, the Petitioner in this case, had shown an inordinate interest in establishing the qualifications of the "graduates" of two schools, Fre-

mont College and Western Medical College, for the taking of the examination. He persisted in this even though he was advised by competent authority that neither of these schools was accredited by any authoritative body and that their graduates would not lawfully qualify for the examination (R. 58). He proceeded without the knowledge or consent of the other Board members to give the December examinations to 23 applicants, 11 from Fremont, 7 from Western and the remainder from other institutions of a similar nature (R. 46). None of the applicants was qualified either as a matter of fact or under Maryland law to take the examination. Dr. Chepko, who was President of the Board, became disturbed over Reddick's actions and brought the matter to the attention of the Attorney General of Maryland (R. 56-58). Subsequently, Reddick purported in reprisal to remove Dr. Chepko as President of the Society and as a member of the Board, although he was without any authority to do so. Dr. Chepko, on the advice of the Attorney General, refused to accept Reddick's action as valid (R. 70).

Reddick then without authority purported to set up his own Board and made Dr. Simon Virkutis President of his Board and got him to sign a large number of medical licenses in blank (R. 167). Dr. Virkutis was unaware of Reddick's intention with respect to these licenses or the illegality of Virkutis' assuming to act as a member or President of the Board. Dr. Virkutis was also a subordinate of Petitioner Reddick on the staff of the Eastern Shore State Hospital, which partly explained the acts of Virkutis. On March 15, 1956, Reddick, acting on his own initiative and without even calling a Board meeting, issued six illegal licenses to practice medicine in the State of Maryland, five of them to persons who had taken the December examina-

tion, even though these examination papers had not as yet been graded.

A meeting of the Board of Medical Examiners was called by Dr. Chepko on April 4, 1956, and was attended by Doctors Chepko, Watson, Follweiler, Simon and Swartwout (R. 73). The last named, who had previously tendered his resignation, did not vote. At this meeting the Board removed Reddick as Secretary-Treasurer and appointed Dr. Simon in his place. It also authorized the Attorney General to bring an action to compel Reddick to turn over to the Board all books and records. Such an action was begun in the Circuit Court for Dorchester County, Maryland, on April 5, 1956 (R. 78).

On April 8, 1956, there was held what was alleged to be the 81st Annual Meeting of the Society at Reddick's call. The minutes show that 30 persons were present, but only 5 residents of Maryland attended in person and 2 other residents were present by proxy. All the others were non-residents (R. 436). Every one of the applicants who illegally took the December examinations was present in person or by proxy, and every motion at the meeting was made and seconded by one of such applicants. At the meeting the action of Reddick in expelling Chepko was ratified. This motion to ratify was moved and seconded by December examinees (E. 247). The meeting also purported to expel Doctors Swartwout, Watson, Simon and Follweiler. This motion was also made by a December examinee and seconded by a December examinee (E. 247). It should be noted that each of these were punitive actions against Board members who had refused to accept the qualifications of the very December examinees who purported to ratify Reddick's action in dismissing those Board members.

With regard to this meeting, it should be noted that Reddick introduced at the trial a copy of a Constitution and By-Laws that delegated to him almost regal powers. It was obvious that it was a fraudulent document and the lower court so found, with the Court of Appeals in complete accord (Petition, page 31). The State of Maryland introduced the valid Constitution which required, among other things, that members be residents of Maryland, that notice be given for meetings, and that seven members were necessary for a quorum. It also established procedure for revoking membership. The valid Constitution did not provided for attendance at meetings by proxy as did Reddick's fraudulent Constitution.

At the April 8, 1956, meeting there were allegedly elected to the illegal Board of Medical Examiners Doctors Jiminez, Brown, Hughes, Virkutis, Mozzer and Yuan, with Harrison and Reddick remaining on the Board as holdover members (R. 250). The meeting also assessed "every member licensed by the Maryland State Homeopathic Board of Medical Examiners after January 1, 1952 * * * the sum of $500.00 for the establishment of a 'fund for the protection and maintenance of homeopathy.' ", and the fund was subject to disbursement at the discretion of Dr. Reddick (R. 252).

Subsequently, on May 4th, 30th and 31st, 1956, hearings were held in the suit filed against Reddick in Dorchester County, Maryland. These hearings ended on May 31st, when Reddick resigned as Secretary-Treasurer of the Society and of the Board, and also as a member of the Board (R. 89-91). Every person present at that time, except Reddick, affirmed that he then and there orally agreed that he would not thereafter "seek or accept" office on the Board or in the Society (R. 91).

Part of the records of the Board were delivered to Dr. Simon in accordance with the stipulation entered into in

the Dorchester County case. On June 4, 1956, a meeting of the legal Board was held in the offices of the Attorney General in Baltimore, at which there were present Doctors Chepko, Harrison and Watson. (These three constituted a quorum, as the legal Board had only five members at that time.) At this meeting the December examinations were invalidated by the Board and Dr. Simon was elected to fill Reddick's unexpired term as a member and as Secretary-Treasurer (R. 95).

Reddick, however, contended that he held a Society meeting on June 2, 1956, at the Emerson Hotel in Baltimore. This Society meeting was, according to Reddick's testimony, attended by himself, Ahlers, Patterson, Boff, Cardillo and Royson (R. 443, 462). It will be noted that Patterson, Boff, Cardillo and Royson are all December examinees and non-residents of Maryland. Reddick also claimed that on June 5, 1956, he allegedly held a meeting of his Board (R. 454). At this meeting, so far as the testimony shows, only Reddick was present. Reddick alleges that he was re-elected Secretary-Treaurer. On June 25, 1956, Reddick, illegally purporting to act for and on behalf of the Board, proceeded to hold examinations for applicants to practice medicine in the State of Maryland. There were 59 such applicants who took the examination and not a single one of them seems to have been qualified on the basis of his application to take such examination under the laws of Maryland. All of them were non-residents of Maryland, and virtually all of them had presumably attended schools, if in fact they had attended any school, which were not accredited as required by Maryland law.

When knowledge of the holding of the examination reached the Attorney General of Maryland on June 26, 1956, he immediately filed a suit for declaratory judgment

and injunction against Reddick's illegal Board to enjoin it from acting as the Board of Medical Examiners representing the Society and from conducting examinations and issuing licenses. A companion suit against those purporting to act as officers of the Society was filed on June 28, 1956, seeking similar relief.

Preliminary restraining orders issued by a judge in Baltimore City were served on Reddick on June 29, 1956, at about 11:00 o'clock A. M. According to Reddick, however, prior to that time the examination papers or booklets had been marked and graded and the "successful" candidates had been issued their illegal licenses. It should be noted, however, that Reddick stated that he did not hold a board meeting to approve licensure of examinees, but that he conferred at about 6:30 or 7:00 o'clock P. M. on June 28, 1956, with Robert H. Brown, the alleged President of the illegal Board concerning the licenses (R. 423).

The trial on the suit filed by the Attorney General was held from July 23rd to August 1st, 1956. Judge Joseph R. Byrnes of Baltimore City issued his opinion on August 13, 1956, and filed orders permanently enjoining the Petitioner and his associates from acting as the Board of Medical Examiners (Homeopathic) or on behalf of said Board. The Petitioner then appealed to the Court of Appeals of Maryland which affirmed the ruling of the lower court, and he is now requesting that this Court grant a writ of certiorari to the Court of Appeals of Maryland.

ARGUMENT

This is a further step of the Petitioner to prolong this matter as long as possible. The subject matter of the Petition was first heard by the Circuit Court for Baltimore City in a seven day trial and later affirmed by the Court of Ap-

peals of Maryland with costs, the costs not having been paid by the Petitioner up to the present time.

This case presents so limited an issue for consideration that it is obvious that review on certiorari by this Court is neither necessary, desirable nor warranted. The main effect of the decree below was to permanently enjoin the Petitioner and others from acting as the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society and from conducting examinations or issuing licenses to practice medicine. The Court found that the Chepko board was the proper board and that, therefore, Reddick must cease his illegal actions.

The Petitioner seeks to conceal the limited significance of the points raised by him in the Petition by phrasing the questions broadly.

The questions as presented in the Petition are vague and seem to try to raise Federal grounds which were not raised in the State court and which are not properly raised in this Court. Examination of the argument made in support of the alleged questions reveals, however, how narrow and lacking in merit or substance are the issues presented for this Court's consideration. The decision of the Court of Appeals of Maryland is so clearly correct and the protection afforded to the Petitioner's rights so broad in Maryland that no question warranting decision by this Court is presented.

I.

The Decision Below is Clearly Correct

The Petitioner would have this Court believe that his Board had some standing at law and therefore some standing in this Court. The Court of Appeals of Maryland, in

regard to the purported Constitution and By-Laws of the Society introduced into evidence by Reddick, agreed with the lower court in finding that it was "a palpably fraudulent document", and that the testimony of Reddick was "unworthy of belief in general". The Court found that Reddick had no authority to remove members of the Board and that the purported meetings held on April 8, 1956, and June 2, 1956, were not called at the request of the duly constituted authority of the Society. The Court further declared that notices were not given regarding the meetings in accordance with the valid By-Laws of the Society; therefore, actions taken at these meetings were invalid. It confirmed the lower court in finding that Chepko's Board was the legally constituted board. Therefore, Reddick's board was not duly selected and elected under the provisions of Article 43, Sections 116 and 118, of the Annotated Code of Maryland (1951 Ed.).

The lower court made the following findings of fact and permanently enjoined the Petitioner from acting as said Board:

> "1) The examinations given by Reddick on December 12, 13 and 14, 1955, were never authorized as to those applicants who took the examination;
>
> 2) The examination papers of those applicants who took the December 12-14 examination were never marked, graded or passed upon by the Board of Medical Examiners of the Maryland State Homeopathic Medical Society;
>
> 3) License Nos. 523 through 557, inclusive, and 561 through 611, inclusive, were issued without proper authorization of the Board of Medical Examiners of the Maryland State Homeopathic Medical Society. License Nos. 558, 559 and 560 have never been issued.

4) At the purported meeting of the Maryland State Homeopathic Medical Society, held on April 8, 1956, only five members who were residents of Maryland attended in person, and two other such residents attended by proxy;

5) The Constitution and By-Laws of the Maryland State Homeopathic Medical Society in force and effect on May 23, 1954, and at all times since that date to the date of the hearings in these cases were as set forth in the printed booklet attached to the minute book, bearing on its cover the year 1927, and introduced in evidence;

6) The Constitution and By-Laws offered in evidence and claimed by Reddick to be the true constitution and by-laws of the Society is a palpably fraudulent document;

7) The testimony of Reddick is unworthy of belief in general, and is worthy of belief only when it consisted of admissions against his interest or was corroborated by other credible evidence;

8) Reddick resignsd from the Board of Medical Examiners of the Maryland State Homeopathic Society and as Secretary-Treasurer of the Society itself on May 31, 1956, and has never been re-elected to either office;

9) Notice was not given to the members of the Society for supposed special meeting held on June 2, 1956, as required by the valid By-Laws of the Society; and

10) The examinations given by Reddick on June 25, 26 and 27, 1956, were never authorized, nor were the examination papers marked, graded or passed upon by the Board of Medical Examiners of the Maryland State Homeopathic Medical Society."

II.

The Activities of the Attorney General of Maryland to Uphold the Law of His State Did Not Interfere With the Rights of its Sister States.

The Attorney General of Maryland was upholding the laws of the State of Maryland in instituting the instant case. Section 121 of Article 43 of the Annotated Code of Maryland (1951 Ed.) stated that a person to be eligible for medical licensure in Maryland must have received a diploma from a school which has "entrance requirements, standard of education, and requirements as defined by the Association of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy." Petitioner disregarded this law entirely and issued purported medical licenses wholesale to those who were not and had not qualified under Maryland law. At the time the suit was filed Petitioner was not even a valid member of the Board of Medical Examiners.

The activities of the Attorney General of Maryland did not in any way interfere with the rights of its sister states, but rather served to clean up and end the illegal activities of the Petitioner Reddick.

III.

The Activities of the Attorney General of Maryland, as Approved by the Court of Appeals, are not in the Scope of the Anti-Trust Laws and no Federal Question is Presented.

Petitioner tries to show that the enjoining of the illegal acts of the Petitioner violates the Sherman Anti-Trust Laws. We suppose the Petitioner is trying to argue that the Maryland Medical Practice Act as interpreted and enforced by the courts of the State of Maryland violates the

provisions of Title 15 U. S. C. A., Secs. 1 through 27 and Sec. 44, in that it created a monopoly. Title 15 U. S. C. A., in fact, applies only to restraints placed upon interstate commerce by individuals, and does not apply to restraints, if there are any, upon commerce, which are entirely intrastate in natur..

In *Alabama Independent Service Station Asso., Inc. v. Shell Petroleum Corp.*, 28 Fed. Supp. 384, the Court held that the Federal Anti-Trust Acts only applied to acts which were in restraint of interstate commerce.

In *Parker v. Brown*, 317 U. S. 341, 87 L. Ed. 315, the State of California, by legislation, restricted the interstate movement of raisins from the grower to the packer. The question arose as to whether or not the restriction placed by the State on the movement of the raisins was a violation of the Sherman Anti-Trust Act. The Court at p. 350 of U. S. 317, said:

> "* * * We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally substract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.
>
> "The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. The Act is applicable to 'persons' including corporations (§7), and it authorizes suits under it by persons and corporations (§15). * * *"

In *United States v. E. C. Knight Co.*, 156 U. S. 1, 39 L. Ed. 325, the Court said:

"It cannot be denied that the power of a state to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion', is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each state from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the states to deal with, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by state legislative power. * * *"

The control by a State of the practice of medicine, by licensing within the State only those who are qualified to practice, is not a regulation of interstate commerce. It is a regulation only of commerce within the geographical boundaries of the State. The regulation of the licensing of qualified practitioners does not in any way create a monopoly. Anyone who is qualified to do so may take the examination and, upon successfully passing it, become a licensed practitioner in the State.

It is well established by the decision of the courts of the United States and of the courts of the States of the United States that the States may regulate those callings or professions which concern the public health, and that there is no violation of constitutional rights as long as they do not act unreasonably in doing so.

In the case of *Dent v. West Virginia*, 129 U. S. 114, 32 L. Ed. 623, the Court said:

> "Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified. * * * No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the State as competent to judge of his qualifications."

In *Barsky v. Board of Regents*, 347 U. S. 442, at 449, the Court said:

> "It is elemental that a State has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of the State's police power. The State's discretion in that field extends naturally to the regulation of all professions concerned with health."

In *Semler v. Oregon*, 294 U. S. 608, 79 L. Ed. 1086, the appellant challenged the constitutionality of an Oregon statute imposing restrictions on advertising by dentists. In overruling each contention of the appellant, Mr. Chief Justice Hughes, speaking for the Court, said:

> "We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards."

In *Graves v. Minnesota*, 272 U. S. 425, 71 L. Ed. 331, the State of Minnesota passed a statute prohibiting the practice of dentistry by persons who had not been licensed by a Board of Dental Examiners, and required that every applicant for a license show that he had been granted a diploma from a dental college of good standing. Graves had applied for a license but was refused an examination by the Board because he had no diploma from an accredited dental college. He attacked the constitutionality of the statute. The Court in that case said:

"It is well settled that a state may, consistently with the 14th Amendment, prescribe that only persons possessing the reasonably necessary qualifications of learning and skill shall practice medicine or dentistry. Dent v. West Virginia, 129 U. S. 114, 122, 32 L. ed. 623, 626, 9 Sup. Ct. Rep. 231; Douglas v. Noble, 261 U. S. 165, 167, 67 L. ed. 590, 592, 43 Sup. Ct. Rep. 303. * * *".

"* * * And the case is to be considered in the light of the principle that the state is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest. Great Northern R. Co. v. Minnesota, 246 U. S. 434, 439, 62 L. ed. 817, 819, 38 Sup. Ct. Rep. 346; Gitlow v. New York, 268 U. S. 652, 668, 69 L. ed. 1138, 1146, 45 Sup. Ct. Rep. 625. * * *".

In *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716, 95 L. Ed. 1317 at 1324, the Court said:

" 'The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life.' (U. S.) 4 Wall at 379, 380. See also Cummings v. Missouri, supra ((U. S. 4 Wall at 318, 319, 18 L. ed. 361, 362)). This doctrine was reaffirmed in Dent v. West Virginia, 129 U. S. 114, 32 L. ed. 623, 9 S. Ct. 231 (1889), in which Mr. Justice Field, who had written the Cummings and Garland opinions, wrote for a unanimous Court upholding a statute elevating standards of qualification to practice medicine. And in Hawker v. New York, 170 U. S. 189, 42 L. ed. 1002, 18 S. Ct. 573 (1898), the Court upheld a statute forbidding the practice of medicine by any person who had been convicted of a felony. Both Dent and Hawker distinguished the Cummings and Garland cases as inapplicable when the legislature establishes reasonable qualifications for a vocational pursuit with the neces-

sary effect of disqualifying some persons presently engaged in it."

See also *Watson v. Maryland*, 218 U. S. 173, 54 L. Ed. 987; *William v. Arkansas*, 217 U. S. 79, 54 L. Ed. 673; *Hawker v. United States*, 170 U. S. 189, 42 L. Ed. 1002.

Appeals in the recent cases involving medical acts of *Taylor v. Oklahoma*, 1 L. Ed. 2d 38; *Dantzler v. Callison*, 1 L. Ed. 2d 235; and *Hitchcock v. Collenberg*, 1 L. Ed. 2d 718; which were similar in nature, were dismissed without hearing.

IV.

The State of Maryland, Upon the Relation of the Attorney General, was a Proper Party.

The Petitioner contends that the Attorney General was not a proper party in the instant case. As a matter of fact, the State of Maryland is the party upon relation of the Attorney General. Article V, Section 3, of the Maryland Constitution states that the Attorney General had the duty to prosecute and defend on the part of the State all cases and he shall commence and prosecute or defend any suit which the General Assembly or the Governor shall direct to be commenced, prosecuted or defended.

The Court of Appeals of Maryland, in finding that the State of Maryland upon relation of the Attorney General was the proper party, said:

> "* * * The appellee claims, (1) that as the Attorney General of the State, he has the right and the duty to institute and prosecute all proper suits for and on behalf of the State, without any request from the Governor or the Assembly, that the above section of the Constitution does not limit his powers, but compels him to commence, prosecute, or defend actions when directed to do so by the Governor or the Assembly;

and, (2) that if he be wrong as to (1), he had the right and the duty to prosecute the suits after obtaining the above mentioned directive of the Governor. We find it unnecessary to rule upon (1) as we agree with (2). If we assume without deciding that the Attorney General had no authority to commence the actions without the Governor's or the Assembly's command, we think the Governor's subsequent written directive to prosecute the suits was a sufficient confirmation and ratification of the Attorney General's action in instituting the suits; and, together, they constituted a compliance with Section 3 of Article 5 of the Maryland Constitution. We, therefore, hold the State of Maryland, upon relation of the Attorney General, was properly a party in both of the suits."

Petitioner claims on page 9 of his Petition that the Court's decision violates the United States Constitution "expressly forbidding state governments from making *ex post facto* laws or laws impairing the obligation of contracts". Of course the prohibition in the Constitution against the passage of *ex post facto* laws applies exclusively to penal or criminal cases, and as to impairment of the obligation of contracts, there existed no contract which could have been impaired in this case. *Calder v. Bull*, 3 U. S. 386, 1 L. Ed. 648. Obviously, there is no substantial Federal question presented.

CONCLUSION

From what has been said heretofore, it is apparent that the Petitioner would have the Court believe that the injunction in this case has adversely affected the licensing of homeopathic physicians. The only effect was to permanently enjoin the Petitioner from engaging in his illegal licensing rampage and declare who constituted the valid Homeopathic Board. However, after this case was decided, the Maryland Legislature amended the Medical Practice

Act by abolishing the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society, and, effective June 1, 1957, there is only one Board of Medical Examiners which licenses both allopaths and homeopaths.

We respectfully submit that examination of the Petitioner's arguments and the position which he takes indicate that there is no Federal question involved; further, that the decision below turns upon its own facts and, indeed, the decision below is clearly correct. Therefore, this case is not the kind to be reviewed by the Court.

For the reasons assigned, the Petition heretofore filed with this Court for the issuance of a writ of certiorari should be denied.

Respectfully submitted,

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